

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 31 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

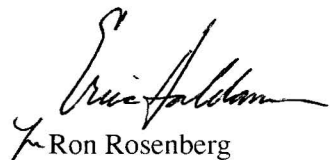
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will sustain the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an L-1B nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Delaware corporation, is an open source management solutions software firm. The petitioner claims to be an affiliate of [REDACTED] located in India. The petitioner seeks to employ the beneficiary as its Product Support Engineer, U.S. Operations for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary possesses specialized knowledge, that he will be employed in a position requiring specialized knowledge, or that he was employed in a position requiring specialized knowledge for the foreign employer.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel contends that the director's denial is erroneous as a matter of fact and law.

I. The Law

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate.

If the beneficiary will be serving the United States employer in a managerial or executive capacity, a qualified beneficiary may be classified as an L-1A nonimmigrant alien. If a qualified beneficiary will be rendering services in a capacity that involves "specialized knowledge," the beneficiary may be classified as an L-1B nonimmigrant alien. *Id.*

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the statutory definition of specialized knowledge:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines specialized knowledge as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

I. The Issue on Appeal

The issue to be addressed is whether the petitioner established that the beneficiary possesses specialized knowledge, and that he has been employed abroad and would be employed in the United States in a position requiring specialized knowledge.

The petitioner is an open source management solutions software firm for Enterprise Resource Planning, with six employees in the United States, 178 employees worldwide, and a gross income of \$250,000. Open Source Software ("OSS") as described by the petitioner is software that is often developed in a "public, collaborative manner." OSS is computer software available in "source code" form provided to users under a license so that they may "study, change, improve and at all times also distribute the software." The petitioner described the company goals as follows:

The Vision of [the company] is to make our software available to companies who could otherwise not afford to pay for expensive business applications and license fees. We allow customers to use their money smartly and tailor the software to their individual needs. We leverage from our customer base to enrich the software and finally we eradicate any lock-in to allow our customers to use and even drop our software freely.

The petitioner stated the beneficiary will be working as a Product Support Engineer. The petitioner provided a description of the beneficiary's duties with the foreign entity, where he was initially employed as an application engineer for the research and development team. In this position, the beneficiary developed specific modules and tools, provided functional and technical training for partners and new employees, and customized the OpenERP report engine for existing modules and ongoing projects. The petitioner stated that currently, the beneficiary serves as a Team Leader responsible for resolving functional and technical queries, functional configuration and training new hires, among other duties.

The petitioner described how the beneficiary will be responsible for customizing OpenERP for the United States and North American market; training partners, customers, and future employee on the software; and implementation support at client sites. According to the petitioner, the beneficiary is the most qualified engineer and product manager in the organization, along with one other employee currently in the United States. He will be one of only two software engineers on the United States team of six other members.

The director issued a Request for Evidence ("RFE"). The director requested that the petitioner provide, *inter alia*, evidence that the beneficiary has specialized knowledge, evidence of the proposed specialized knowledge position in the United States, and evidence that the beneficiary was employed in a position requiring specialized knowledge with the foreign employer.

In response to the RFE, the petitioner provided documentary evidence of the beneficiary's work product, syllabi of trainings to be conducted by the beneficiary, an organizational chart showing his position with the petitioner's United States organization, and a more detailed description of the nature of the specialized knowledge positions and the specialized knowledge held by the beneficiary.

The director ultimately denied the petition, concluding that the petitioner failed to establish that the beneficiary would be employed in a specialized knowledge position, that the beneficiary possesses specialized knowledge, or that he served in a position involving specialized knowledge with the foreign employer. In denying the petition, the director found that the beneficiary's position abroad and in the U.S. is similar to that of a computer systems analyst and that he performs the same or similar duties as others in the field. Furthermore, the director found that the petitioner failed to demonstrate that knowledge of the organization's processes, methodologies, and framework is specialized knowledge.

On appeal, counsel asserts that evidence of record is sufficient to determine that the beneficiary has specialized knowledge, evidence of the proposed specialized knowledge position in the United States, and evidence that the beneficiary was employed in a position requiring specialized knowledge with the foreign employer.

III. Analysis

Upon review, the petitioner's assertions are persuasive. The petitioner has established that the beneficiary possesses specialized knowledge and that he would be employed in the United States in a specialized knowledge capacity as defined at 8 C.F.R. § 214.2(l)(1)(ii)(D).

In visa petition proceedings, the burden is on the petitioner to establish eligibility. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Id.* The director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

In order to establish eligibility, the petitioner must show that the individual will be employed in a specialized knowledge capacity. 8 C.F.R. § 214.2(l)(3)(ii). The statutory definition of specialized knowledge at Section 214(c)(2)(B) of the Act is comprised of two equal but distinct subparts. First, an individual is considered to be employed in a capacity involving specialized knowledge if that person "has a special knowledge of the company product and its application in international markets." Second, an individual is considered to be serving in a capacity involving specialized knowledge if that person "has an advanced level of knowledge of processes and procedures of the company." *See also* 8 C.F.R. § 214.2(l)(1)(ii)(D). The petitioner may establish eligibility by submitting evidence that the beneficiary and the proffered position satisfy either prong of the definition.

In the present case, the petitioner's claims are based on the second prong of the statutory definition, asserting that the beneficiary has an advanced level of knowledge of the company's processes and procedures. The petitioner emphasizes that the beneficiary has been a lead developer for the company's largest United States client from abroad, received six months of technical training plus on the job training, and has specific knowledge of all three of the petitioner's components including the data server, application server, and web server.

The petitioner submitted detailed and credible evidence to demonstrate that the beneficiary is one of the few employees within the petitioner's organization who possesses advanced knowledge of the company's product development processes. The petitioner further established that such knowledge cannot be gained outside the

organization and submitted evidence of the beneficiary's educational background and work experience that contributes to an advanced level of knowledge regarding the processes and procedures of the company. *See* 8 C.F.R. § 214.2(l)(3)(iv). Finally, the petitioner explained in detail why the proffered position requires this advanced level of knowledge, as it involves adapting the petitioner's processes and methodologies for a new market and will require him to train others in the development processes.

For the reasons discussed above, the evidence submitted establishes that the beneficiary possesses specialized knowledge and will be employed in a specialized knowledge capacity with the petitioner in the United States. *See* Section 214(c)(2)(B) of the Act. Accordingly, the appeal will be sustained.

IV. Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here the petitioner has met that burden.

ORDER: The appeal is sustained.